

Weiss, Rachel

From: Johnson, Perry
Sent: Wednesday, June 11, 2014 3:55 PM
To: Weiss, Rachel
Cc: Chris Tweeten (c.tweeten@bresnan.net); Bolger, Katrina; Tony Harbaugh (tharbaugh@ccsomt.com); Keune, Mary Ann; Gray, Carolyn
Subject: POST legislative issues

Rachel,

The following is an outline of the legislative changes that POST will be asking for next year. If this is the correct format, please forward to the Law & Justice Interim Committee for their review and consideration.

- 7-32-303 provides for basic training of law enforcement officer recruits. It requires either a high school diploma or a GED certificate. OPI no longer recognized the GED test instrument, so POST proposes to delete the reference to the GED. POST has proposed rules to require either a certificate from OPI or a diploma without specifying which test instrument is used for the HS equivalency certificate from OPI.
- 7-32-303 provides that a basic certificate issues from POST only on request of the officer. POST proposes to delete this provision so an officer cannot challenge POST's jurisdiction to administer discipline by arguing that he or she did not request a certificate. POST's proposed rules will provide for issuance of a certificate to all officers who complete the basic course whether requested by the officer or not.
- POST proposes to change the process for required mental health evaluations for applicants for the basic course. Counties and towns in eastern MT find it difficult to get these evaluations done due to a lack of local mental health professionals. POST suggests amendments to MCA 7-32-303 to allow employing law enforcement to use valid mental evaluations done by professionals over distance.
- POST proposes to amend MCA 44-4-403 to make POST a "criminal justice agency" for purposes of the Criminal Justice Information Act. By statute all of the licensing boards in Title 37 of the Code are criminal justice agencies authorized to use confidential criminal justice information for purposes of licensing and enforcement. POST seeks the same treatment for its certification and enforcement powers for public safety officers.

Please let me know if I need to change or edit this!

Thanks!

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Law and Justice meeting
June 27, 2014

1 _____ NO. _____

2 INTRODUCED BY _____

3 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DUTIES OF THE PUBLIC SAFETY OFFICER
4 STANDARDS AND TRAINING COUNCIL WITH RESPECT TO CERTIFICATION OF PUBLIC SAFETY
5 OFFICERS; REMOVING REFERENCE TO THE GENERAL EDUCATIONAL DEVELOPMENT TEST;
6 ALLOWING A MENTAL HEALTH PROFESSIONAL ACTING WITHIN THE SCOPE OF THE
7 PROFESSIONAL'S LICENSURE BY THE STATE OF MONTANA TO EXAMINE AND EVALUATE THE
8 MENTAL HEALTH OF A PERSON WHO IS UNDER CONSIDERATION FOR APPOINTMENT AS A
9 PEACE OFFICER; ALLOWING SUBSTITUTION OF A STANDARDIZED MENTAL HEALTH
10 EVALUATION INSTRUMENT EVALUATED BY A MENTAL HEALTH PROFESSIONAL ACTING
11 WITHIN THE SCOPE OF THE PROFESSIONAL'S CERTIFICATION BY ANY STATE FOR THE MENTAL
12 HEALTH EXAMINATION; REQUIRING THE PUBLIC SAFETY OFFICER STANDARDS AND TRAINING
13 COUNCIL TO ISSUE A BASIC CERTIFICATE TO A PUBLIC SAFETY OFFICER WHO HAS MET
14 EDUCATIONAL REQUIREMENTS AND SATISFIED A ONE-YEAR PROBATIONARY PERIOD;
15 ESTABLISHING THE PUBLIC SAFETY OFFICER STANDARDS AND TRAINING COUNCIL AS A
16 CRIMINAL JUSTICE AGENCY FOR PURPOSES OF THE CRIMINAL JUSTICE INFORMATION ACT FOR
17 THE LIMITED PURPOSE OF CERTIFYING OR RECERTIFYING PUBLIC SAFETY OFFICERS,
18 CONDUCTING INVESTIGATIONS INTO ALLEGATIONS OF PUBLIC SAFETY OFFICER MISCONDUCT
19 THAT MAY RESULT IN SUSPENSION OR REVOCATIONS OF A PUBLIC SAFETY OFFICER'S
20 CERTIFICATION, AND CONDUCTING CERTIFICATION SUSPENSION OR REVOCATION
21 PROCEEDINGS; AMENDING SECTIONS 7-32-303 AND 44-4-403, MCA; AND PROVIDING AN
22 EFFECTIVE DATE."

23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

24 **SECTION 1.** Section 7-32-303, is amended to read:

25 "Peace officer employment, education, and certification standards -- suspension or
26 revocation -- penalty. (1) For purposes of this section, unless the context clearly indicates
27 otherwise, "peace officer" means a deputy sheriff, undersheriff, police officer, highway patrol

1 officer, fish and game warden, park ranger, campus security officer, or airport police officer.

2 (2) A sheriff of a county, the mayor of a city, a board, a commission, or any other person
3 authorized by law to appoint peace officers in this state may not appoint any person as a peace
4 officer who does not meet the following qualifications plus any additional qualifying standards
5 for employment promulgated by the Montana public safety officer standards and training
6 council established in 2-15-2029:

7 (a) be a citizen of the United States;

8 (b) be at least 18 years of age;

9 (c) be fingerprinted and a search made of the local, state, and national fingerprint files to
10 disclose any criminal record;

11 (d) not have been convicted of a crime for which the person could have been imprisoned in a
12 federal or state penitentiary;

13 (e) be of good moral character, as determined by a thorough background investigation;

14 (f) be a high school graduate or have ~~passed the general educational development test and~~
15 been issued an equivalency certificate by the superintendent of public instruction or by an
16 appropriate issuing agency of another state or of the federal government;

17 (g)(i) be examined by a licensed physician, or for purposes of a mental health evaluation, a
18 person who is licensed by the state under title 37 and acting within the scope of the person's
19 licensure, who is not the applicant's personal physician or licensed mental health professional,
20 appointed by the employing authority to determine if the applicant is free from any mental or
21 physical condition that might adversely affect performance by the applicant of the duties of a
22 peace officer; or

23 (ii) satisfactorily complete the physical examination required by subsection (2)(g)(i) and
24 complete a standardized mental health evaluation instrument determined by the employing
25 authority to be sufficient to examine for any mental health conditions that might adversely
26 affect performance by the applicant of the duties of a peace officer if the instrument is scored
27 by a mental health professional acting within the scope of licensure by any state and the mental
28 health professional finds that the applicant is free from any such mental health condition.

29 (h) successfully complete an oral examination conducted by the appointing authority or its

1 designated representative to demonstrate the possession of communication skills,
2 temperament, motivation, and other characteristics necessary to the accomplishment of the
3 duties and functions of a peace officer; and

4 (i) possess or be eligible for a valid Montana driver's license.

5 (3) At the time of appointment, a peace officer shall take a formal oath of office.

6 (4) Within 10 days of the appointment, termination, resignation, or death of any peace
7 officer, written notice of the event must be given to the Montana public safety officer
8 standards and training council by the employing authority.

9 (5) (a) Except as provided in subsections (5)(b) and (5)(c), it is the duty of an appointing
10 authority to cause each peace officer appointed under its authority to attend and successfully
11 complete, within 1 year of the initial appointment, an appropriate peace officer basic course
12 certified by the Montana public safety officer standards and training council. Any peace officer
13 appointed after September 30, 1983, who fails to meet the minimum requirements as set forth
14 in subsection (2) or who fails to complete the basic course as required by this subsection (5)(a)
15 forfeits the position, authority, and arrest powers accorded a peace officer in this state.

16 (b) A peace officer who has been issued a basic certificate by the Montana public safety
17 officer standards and training council and whose last date of employment as a peace officer
18 was less than 36 months prior to the date of the person's present appointment as a peace
19 officer is not required to fulfill the basic educational requirements of subsection (5)(a). If the
20 peace officer's last date of employment as a peace officer was 36 or more but less than 60
21 months prior to the date of present employment as a peace officer, the peace officer may
22 satisfy the basic educational requirements as set forth in subsection (5)(c).

23 (c) A peace officer referred to in subsection (5)(b) or a peace officer who has completed a
24 basic peace officer's course that is taught by a federal, state, or United States military law
25 enforcement agency and that is reviewed and approved by the Montana public safety officer
26 standards and training council as equivalent with current training in Montana and whose last
27 date of employment as a peace officer or member of the military law enforcement was less
28 than 60 months prior to the date of present appointment as a peace officer may, within 1 year
29 of the peace officer's present employment or initial appointment as a peace officer within this

1 state, satisfy the basic educational requirements by successfully completing a basic equivalency
2 course administered by the Montana law enforcement academy. The prior employment of a
3 member of the military law enforcement must be reviewed and approved by the Montana
4 public safety officer standards and training council. If the peace officer fails the basic
5 equivalency course, the peace officer shall complete the appropriate basic equivalency course
6 within 120 days of the date of the failure of the equivalency course.

7 (6) The Montana public safety officer standards and training council may extend the 1-year
8 time requirements of subsections (5)(a) and (5)(c) upon the written application of the peace
9 officer and the appointing authority of the officer. The application must explain the
10 circumstances that make the extension necessary. Factors that the council may consider in
11 granting or denying the extension include but are not limited to illness of the peace officer or a
12 member of the peace officer's immediate family, absence of reasonable access to the basic
13 equivalency course, and an unreasonable shortage of personnel within the department. The
14 council may not grant an extension to exceed 180 days.

15 (7) A peace officer who has successfully met the employment standards and qualifications and
16 the educational requirements of this section and who has completed a 1-year probationary
17 term of employment must, ~~upon application to the Montana public safety officer standards and~~
18 ~~training council,~~ be issued a basic certificate by the council, certifying that the peace officer has
19 met all the basic qualifying peace officer standards of this state.

20 (8) It is unlawful for a person whose certification as a peace officer, detention officer, or
21 detention center administrator has been revoked or suspended by the Montana public safety
22 officer standards and training council to act as a peace officer, detention officer, or detention
23 center administrator. A person convicted of violating this subsection is guilty of a misdemeanor,
24 punishable by a term of imprisonment not to exceed 6 months in the county jail or by a fine not
25 to exceed \$500, or both."

26 **SECTION 2.** Section 44-4-403 is amended to read as follows:

27 **"44-4-403. Council duties -- determinations -- appeals.** (1) The council shall:
28 (a) establish basic and advanced qualification and training standards for employment;

1 (b) conduct and approve training; and

2 (c) provide for the certification or recertification of public safety officers and for the suspension
3 or revocation of certification of public safety officers.

4 (2) The council may waive or modify a qualification or training standard for good cause.

5 (3) A person who has been denied certification or recertification or whose certification or
6 recertification has been suspended or revoked is entitled to a contested case hearing before
7 the council pursuant to Title 2, chapter 4, part 6, except that a decision by the council may be
8 appealed to the board of crime control, as provided for in 44-4-301. A decision of the board of
9 crime control is a final agency decision subject to judicial review.

10 (4) The council is designated as a criminal justice agency within the meaning of 44-5-103 for the
11 purpose of obtaining and retaining confidential criminal justice information, as defined in 44-5-
12 103, regarding public safety officers in order to provide for the certification or recertification of
13 public safety officers and for the suspension or revocation of certification of public safety
14 officers, but the council may not record or retain any confidential criminal justice information
15 without complying with the provisions of the Montana Criminal Justice Information Act of 1979,
16 Title 44, chapter 5."

17 **SECTION 3. Effective date.** This Act is effective on passage and approval.

18 -End-